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VIA ECF

The Honorable Jesse M. Furman
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

Re: United States v. Nathaniel Chastain, 22-cr-305 (JMF)

Dear Judge Furman:

As the Court is aware, we represent the defendant, Nathaniel Chastain, in the above-referenced matter. We write with the government's consent to respectfully request that the Court credit Mr. Chastain with a two-level downward adjustment based on the Sentencing Commission's recently approved Guidelines amendment, USSG § 4C1.1.

Section 4C1.1 is scheduled to go into effect on November 1, 2023, and it will provide a two-level reduction for first time, nonviolent offenders, like Mr. Chastain, who satisfy certain criteria. Specifically, the amendment will apply to defendants (1) with no criminal history points, (2) who did not receive a terrorism enhancement, (3) who did not use violence or threats of violence, (4) who did not cause death or serious injury, (5) who did not commit a sex offense, (6) who did not cause any victim substantial financial hardship, (7) who did not possess or use a firearm or deadly weapon, (8) who did not violate a victim's civil rights, (9) who did not commit a hate crime, and (10) who did not receive an aggravating role adjustment under USSG §3B1.1. USSG § 4C1.1(a). The government does not contest that Mr. Chastain meets the required criteria.

In addition to the two-level reduction described above, beginning in November 2023, the Sentencing Commission will further advise that a non-incarceratory sentence is "generally appropriate" for offenders with zero criminal history points who qualify for an adjustment under USSG § 4C1.1, and whose applicable guidelines range is in Zone A or Zone B of the Sentencing Table. USSG § 5C1.1 comment. (n.10(A)). For all other offenders with zero criminal history points, the Commission will advise that a non-incarceratory sentence "may be appropriate" when "the defendant's applicable guidelines range overstates the gravity of the offense because the offense of conviction is not a crime of violence or an otherwise serious offense." USSG § 5C1.1 comment. (n.10(B)).

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The parties have conferred on this issue and have reached the following agreement: the government agrees that Mr. Chastain should be sentenced as though the forthcoming amendments to the Sentencing Guidelines have already taken effect, and in exchange, should the Court apply the above-noted two-level reduction in its Guidelines calculation, and consider the non-custodial recommendations set forth in USSG § 5C1.1, the defense agrees not to later seek a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2) on the basis of the aforementioned amendments. Although the Sentencing Commission may still be considering whether the amendments will be retroactive, courts have already begun crediting defendants with the two-level reduction, with the government's agreement, as here. *See, e.g., United States v. Trunz*, No. 1:19-cr-00375-WFK, ECF Nos. 25-26 (E.D.N.Y.); *United States v. Soong*, No. 3:22-cr-00372-SI, ECF Nos. 41-42, (N.D. Cal.).

We therefore request that the Court apply this two-level decrease to Mr. Chastain's offense level, and consider the USSG § 5C1.1 non-custodial recommendations when USSG § 4C1.1 applies, which would in the defendant's view reduce his offense level to 5 and result in an applicable guidelines range of 0 – 6 months' imprisonment, and in the government's view would reduce the defendant's offense level to 16 and result in an applicable guidelines range of 21 – 27 months' imprisonment.¹

Thank you for the Court's consideration.

Respectfully submitted,

GREENBERG TRAURIG, LLP

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¹ Mr. Chastain respectfully reserves all other Guidelines arguments made in his August 8, 2023 sentencing submission.